

### **REMARKS**

The pending Office Action addresses claims 1-35. Claims 2-5, 13-16, and 25 are withdrawn, and remaining claims 1, 6-12, 17-24, and 26-35 stand rejected. Reconsideration is respectfully requested in view of the amendments and remarks submitted herewith.

#### ***Amendments to the Claims***

Applicant's amend claim 24 to recite that the spinal fixation element is locked relative to the receiver member on each anchoring device to maintain the adjacent vertebrae at a fixed distance relative to one another while allowing free movement of each *receiver member relative to each bone-engaging member*. Support for this amendment can be found throughout the specification and in the original claims, for example, in claims 1 and 12.

Claim 32 is amended to clarify that the proximal seat is formed on an internal surface of the receiver member. Support for this amendment can be found throughout the specification, for example, in paragraph 0023 of the published application.

No new matter is added.

#### ***Rejections Pursuant to 35 U.S.C. §102(b)***

The Examiner continues to reject claims 1, 6-12, 17-24, and 26-35 pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Publication No. 2002/0151900 of Glascott, arguing that Glascott teaches each and every limitation of Applicants' claims. Applicant's disagree.

#### **Claims 1, 6-12, and 17-23**

In Applicant's previous response, Applicants argued that Glascott does not teach or even suggest a receiver member that *can move freely* relative to the bone-engaging member once the fixation element is locked in a fixed position relative to the receiver member, as required by independent claims 1 and 12. Rather, Glascott teaches a screw assembly where the receiver is *locked* relative to the screw once the rod is locked within the receiver. In response, the Examiner argues that

Glascott clearly is “adapted” to mate in such a way as to lock the spinal rod in a fixed vertical and horizontal position within the received member while maintaining movement about the bone-engaging member. One would do so merely by not fully tightening the setscrew in place. Thus, Glascott is “adapted” to perform the function claimed.

If one were to not fully tighten the set screw of the Glascott device, as suggested by the Examiner, then the spinal rod would not be fixed in a vertical and horizontal position. Claims 1 and 12 specifically require that the fastening element be adapted to *lock* a fixation element in a *fixed position* relative to the receiver member while allowing the receiver member to move freely relative to the bone-engaging member. A loosely applied set screw will not lock a spinal rod in a fixed position. The only way to lock the spinal rod of the Glascott device in a fixed position is to fully tighten the set screw, however when the set screw is fully tightened the receiver head cannot move freely relative to the bone screw. Accordingly, the bone screw of Glascott cannot perform the claimed function, and therefore claims 1 and 12, as well as claims 6-11 and 17-23 which are dependent therefrom, distinguish over Glascott and represent allowable subject matter.

#### Claims 24 and 26-31

Claim 24 is amended to recite a method for correcting spinal deformities that includes locking a spinal fixation element to a receiver member on a plurality of anchoring devices to maintain adjacent vertebrae at a fixed distance relative to one another while allowing free movement of each receiver member relative to each bone-engaging member. As explained above, Glascott does not teach or even suggest a device that is capable of locking a spinal fixation element in a fixed position while allowing free movement of a receiver member relative to a bone-engaging member. Glascott therefore cannot teach the method recite in claim 24. To the contrary, Glascott teaches a method in which the receiver head of the bone screw is locked in position relative to the bone screw once the rod is secured to the receiver head. Accordingly, claim 24, as well as claims 26-31 which are dependent therefrom, distinguish over Glascott and represent allowable subject matter.

#### Claims 32-35

Amended claim 32 recites a spinal anchoring device that includes a receiver member having a distal seat for receiving at least a portion of the head of the bone screw and a proximal seat formed on an internal surface thereof for receiving a spinal fixation rod. The Examiner argues that the

pressure disc in the receiver head of the bone screw of Glascott forms a proximal seat. The pressure disc, however, *is not form on an internal surface of the receiver head*, as required by claim 32.

Rather, the pressure disc is a separate component that is removably disposed within the receiver it.

Claim 32 therefore distinguishes over Glascott and represents allowable subject matter. Claims 33-35 are allowable at least because they depend from allowable claim 32.

### ***Conclusion***

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

Respectfully submitted,

Date: May 19, 2006

/LA/

Lisa Adams, Reg. No. 44,238  
Attorney for Applicant(s)

Nutter McClennen & Fish LLP  
World Trade Center West  
155 Seaport Boulevard  
Boston, MA 02210  
Tel: (617)439-2550  
Fax: (617)310-9550

1526606.1